

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF ALABAMA  
Jasper Division

FLORA PRICE, JAMES ANN MARTIN, )  
PHYLLIS VANCE, )  
Plaintiffs; )  
)  
-vs.- )  
)  
CARNIVAL CRUISE LINES, INC., et. al, )  
Defendants.

No. CV-98-P-724-J

FILED  
98 NOV -6 AM 11:59  
U.S. DISTRICT COURT  
N.D. OF ALABAMA

ENTERED

NOV 06 1998

OPINION

Defendant's Motion to Dismiss or Transfer, Plaintiffs' Motion to Remand, and Plaintiffs' Motion to Stay Defendant's Motion to Dismiss were considered at this court's August 27, 1998 motion docket. For the reasons expressed herein, the motion to remand is due to be denied, the motion to dismiss is due to be granted, and the motion to stay is due to be denied as moot.

**Facts**

The plaintiffs filed this class action on February 24, 1998 in the Circuit Court of Walker County, Alabama. On March 26, 1998 defendant Carnival Cruise Lines, Inc. (Carnival) timely removed the action to this court. The named plaintiffs are each part-owners of a travel agency that has booked Carnival cruises for customers in exchange for a commission from Carnival. The complaint alleges that Carnival has illegally profited by fraudulently inflating Port Charges and by not paying commissions to class members on the inflated portion of the Port Charges. The complaint asserts that the plaintiffs are members of a statewide class. The complaint limits damages to \$74,000 in compensatory damages per class member, including interest and costs; it

waives any claim for punitive damages. The complaint seeks payment of attorney's fees only from the common fund recovery.

On April 2, 1998 the defendant filed a Motion to Dismiss or Transfer, arguing that the filing of an almost identical complaint in Florida state court on behalf of an alleged nationwide class mandates the dismissal of this action on forum non conveniens grounds. On April 29, 1998, the plaintiffs filed a Motion to Remand, contending that attorney's fees should not be aggregated for purposes of determining the amount in controversy. The plaintiffs also filed a Motion to Stay Defendant's Motion to Dismiss or Transfer Pending the Court's Decision on Plaintiff's Motion to Remand.

### **Analysis**


The plaintiffs' Motion to Remand argues that this court lacks diversity jurisdiction over this action because the complaint expressly limits damages to \$74,000 per class member and provides that attorney's fees will be paid from a common fund established for the plaintiffs' benefit. The plaintiffs contend that any attorney's fees awarded would not come from the defendant, would not increase the class members' recovery, and would not increase the defendant's liability. However, when plaintiffs have a common and undivided interest in enforcing a right, their interests may be aggregated for jurisdictional purposes. *See Tapscott v. M.S. Dealer Service Corp.*, 77 F.3d 1353, 1358-59 (11<sup>th</sup> Cir. 1996). As this court has held before, attorney's fee awards in class action cases, like punitive damage awards, should be aggregated for purposes of determining the amount in controversy. *See Nelson v. Carnival Cruise Lines, Inc.*, No. CV97-P-2513-W (N.D. Ala. Mar. 9, 1998); *Davis v. Carl Cannon Chevrolet-*

*Olds, Inc.*, No. CV97-P-2889-J (N.D. Ala. Feb. 18, 1998).

In this case, the plaintiffs have named a statewide class of all travel agency owners who booked Carnival cruises during the past twenty years. A successful suit by such a large class would almost certainly result in an attorney's fee award greater than \$75,000. Thus, because this court finds that it has jurisdiction, the motion to remand is due to be denied.

Because the plaintiffs did not oppose the Motion to Dismiss or Transfer if the court found that it had jurisdiction, the motion to dismiss on forum non conveniens grounds is due to be granted. Because the court has, in effect, stayed the motion to dismiss pending its ruling on the motion to remand, the motion to stay is moot.

Dated: Nov - 6, 1998

  
Chief Judge Sam C. Pointer, Jr.

Service List

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